

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7660

Joint petition of Vermont Marble Power)
Division of OMYA, Inc. ("VMPD") for consent)
to sell, and Central Vermont Public Service)
Corporation to purchase, certain assets of)
VMPD, and approval of certain other related
matters, including revocation of VMPD's
Certificate of Public Good

Order entered: 4/21/2011

PROTECTIVE ORDER RE CERTAIN PREFILED EVIDENCE

I. INTRODUCTION

Central Vermont Public Service Corporation ("CVPS") has filed two motions with the Public Service Board ("Board") for confidential treatment of certain prefiled documents that were subsequently admitted into the record at the technical hearing on April 11, 2011. In the first motion filed on February 28, 2011, CVPS requests confidential treatment of a portion of an attachment to the Memorandum of Understanding ("MOU") that was filed with the Board on the same date.¹ In the second motion filed on March 11, 2011, CVPS seeks confidential treatment of portions of two exhibits to the prefiled testimony of James C. Cater in support of the MOU.

CVPS seeks confidential treatment of the information that is the subject of the motions for at least two years, or until such time as CVPS can inform the Board that the strategic value of the commercially-sensitive information has passed, or until CVPS has released the information to the public. None of the other parties has objected to either of CVPS's motions for confidential treatment.

1. The MOU, including the attachment, was entered into the record at the technical hearing as Exh. CVPS-JMK-1 to the prefiled testimony of Joseph M. Kraus.

II. DISCUSSION

To promote full public understanding of the basis for its decisions, the Board has actively taken steps to limit the amount of information subject to protective orders. The Board has encouraged parties to remove material from that protection to the extent possible. Since 2001, the Board has required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.² Generally, the Board only resolves disputes about information when there is a genuine disagreement about its confidential nature.³ However, even when the motion is uncontested the Board will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal.

In determining whether to protect confidential information, the Board considers three issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown "good cause" for invoking the Board's protection?⁴

CVPS's two motions for confidential treatment in this docket both relate largely to CVPS's "confidential and proprietary" projections of future market costs for power, specifically:

(a) portions of an attachment to the MOU that include or would reveal CVPS's confidential and proprietary projections of the future market costs for energy, capacity and

2. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545, ("*Entergy Docket*"), Order of 11/9/01 at 5-6.

3. *Id.* at 6.

4. *See, e.g., Entergy Docket*, Order of 3/29/02 at 2.

renewable energy attributes of supply resources, which are used to determine the projected output value of hydroelectric facilities and the size of the value-sharing pool;

(b) portions of two exhibits (Exh. CVPS-JCC-2 and Exh. CVPS-JCC-3) to the prefiled testimony of James C. Cater that include CVPS's updated economic valuation of the VMPD assets, including CVPS's confidential and proprietary projections of future market costs for power.

Among other things, CVPS states that its power market projections are commercially sensitive information and that public disclosure of this information would harm CVPS's interests and those of its customers. CVPS notes that its power procurement and supply management activities are ongoing and that it is currently involved in additional market activities with third parties. CVPS also contends that the protection of CVPS's market projections should not hamper the public's ability to understand the value-sharing arrangement or other matters related to the proposed acquisition as there is "substantial public information of future supply market costs for energy, capacity and renewable attributes" and about the supply resources and related assets of VMPD and CVPS.⁵ It should also be noted that CVPS's motions do not request confidential treatment for an indefinite period, but rather for at least two years.

After reviewing the motion, the supporting materials and the information that is the subject of the motions and applying the existing standard, I conclude that CVPS has made a *prima facie* showing that confidential treatment is warranted for the information at issue. Accordingly, I grant CVPS's motion for a protective order for a period of two years.

During the period covered by this protective order, CVPS has a continuing obligation to reexamine protected information and to release material that would not cause competitive harm, or that has otherwise been made public. Parties retain the ability to challenge whether information encompassed by this ruling should be removed from the special protections adopted in this Order or removed completely from protection as confidential information.

5. CVPS's Motion for Confidential Treatment of MOU Attachment at 3; CVPS's Motion for Confidential Treatment of Exhibits CVPS-JCC-2 & 3 at 2 and 4.

III. ORDER

CVPS's motions for the confidential treatment of certain information in prefiled documents, as described above, is granted for a period of two years, and it is hereby ordered that this confidential information shall be treated in this proceeding as follows:

1. All documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content, and a statement that it shall not be opened or released from the custody of the Clerk of the Board for a period of two years from the date hereof, except by Order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any other person.

2. No persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in the Order of September 21, 2010, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Board stenographer or reporter in this proceeding shall be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement.

Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

Dated at Montpelier, Vermont, this 21st day of April, 2011.

s/Lars Bang-Jensen

Lars Bang-Jensen
Hearing Officer

OFFICE OF THE CLERK

FILED: April 21, 2011

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)